

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, PA 19103-2029

IN THE MATTER OF:

E.I. du Pont de Nemours and Company

Respondent

Washington Works
8480 Dupont Road
Building 1
Route 892 South
Washington, WV 26181

Facility.

:
: Docket No. EPCRA-03-2006-0062

:
: **CONSENT AGREEMENT**

:
: Proceeding under EPCRA §§ 313 and 325,
: 42 U.S.C. §§ 11023 and 11045

CONSENT AGREEMENT

Preliminary Statement

This Consent Agreement is entered into by the Director, Waste and Chemicals Management Division, U. S. Environmental Protection Agency, Region III ("Complainant") and E.I. du Pont de Nemours and Company ("Respondent"), pursuant to Section 325 of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045, and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* ("Consolidated Rules"), 40 C.F.R. Part 22.

Pursuant to Sections 22.13(b), 22.18(b)(2), and 22.18.(b)(3) of the *Consolidated Rules*, this Consent Agreement and attached Final Order (collectively "CAFO") resolve Complainant's claims for civil penalties arising from Respondent's self-disclosed violations of Section 313 of EPCRA, 42 U.S.C. § 11023, and regulations promulgated thereunder, as set forth in Paragraph 16 of this Consent Agreement.

General Provisions

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
2. Except as provided in Paragraph 1, above, Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO.
3. Respondent agrees not to contest the U.S. Environmental Protection Agency's jurisdiction with respect to the execution or the enforcement of this CAFO.
4. For the purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this CAFO or to appeal the Final Order accompanying this Consent Agreement.
5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms.
6. Respondent agrees not to deduct for civil taxation purposes the civil penalty to be paid in settlement of this action as specified in this CAFO.
7. Respondent shall bear its own costs and attorney's fees.
8. The provisions of this CAFO shall be binding upon Complainant, Respondent and Respondent's officers, directors, successors and assigns.
9. By signing this Consent Agreement, Respondent certifies that the Facility covered by this CAFO is currently in compliance with all applicable requirements of EPCRA Section 313, 42 U.S.C. § 11023.
10. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, for the specific violations alleged herein and as more fully set forth in Paragraph 16 of this CAFO. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violations of the federal laws and regulations administered by EPA.
11. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state and local law. Furthermore, EPA reserves any rights and remedies available to it under EPCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO following entry of this CAFO. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the *Consolidated Rules*.

12. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare or the environment.
13. The undersigned representative of Respondent certifies that she or he is fully authorized by Respondent to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.
14. This CAFO constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed herein.
15. The effective date of this Consent Agreement and the accompanying Final Order is the date upon which the Final Order, after signature by the Regional Administrator of EPA, Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

EPA's Findings of Fact and Conclusions of Law

16. In accordance with Section 22.18(b)(2) of the *Consolidated Rules*, Complainant adopts the following findings of fact and conclusions of law.

COUNTS I-VI

- a. Section 313 of EPCRA, 42 U.S.C. § 11023, requires the owner or operator of a facility that: 1) has 10 or more full-time employees; 2) is in a primary Standard Industrial Classification ("SIC") Code 20 through 39 (as in effect on July 1, 1985) or other SIC or industry code as set forth in 40 C.F.R. § 372.22(b); and 3) manufactured, processed or otherwise used a toxic chemical listed in 40 C.F.R. § 372.65 in excess of the threshold quantity established in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), during the calendar year for which the form is required, to complete and submit a toxic chemical release form ("Form R") or alternate threshold report ("Form A") for each toxic chemical to EPA and the state in which the facility is located, by July 1 of the following calendar year.
- b. Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3 define "facility" to mean, in relevant part, all buildings, equipment, structures and other stationary items that are located on a single site that are owned or operated by the same person.
- c. Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), defines "person" to include any corporation.

- d. Respondent is a Delaware corporation.
- e. Respondent is, and was at all times relevant to this CAFO, a "person" within the meaning of Section 329(7) of EPCRA, 42 U.S.C. §11049(7).
- f. Respondent owned and operated Washington Works, a "facility", as that term is defined at Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), located on State Road 892 South in Parkersburg, West Virginia ("Facility"), at the time of the violations alleged herein.
- g. Respondent had 10 or more full-time employees at the Facility during the period of violations alleged herein.
- h. Respondent's Facility had a primary SIC Code of 2821 at the time of the violations alleged herein.
- i. Respondent was required to complete and submit a Form R or Form A for each toxic chemical listed in 40 C.F.R. § 372.65 which was manufactured, processed or otherwise used at the Facility in excess of the threshold quantity established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), during the calendar year for which the form was required, to EPA and the State of West Virginia by July 1 of the following calendar year.
- j. "Sodium nitrite" and "copper compounds" are toxic chemicals as defined by 40 C.F.R. § 372.3 and are listed in 40 C.F.R. § 372.65.
- k. As set forth in Section 313(f)(1)(B)(iii) of EPCRA, 42 U.S.C. § 11023(f)(1)(B)(iii), and 40 C.F.R. § 372.25, the reporting threshold amount for a toxic chemical which is processed or manufactured at a facility is 25,000 pounds, except as provided in 40 C.F.R. §§ 372.27 and .28, which are inapplicable to this matter.
- l. Respondent manufactured more than 25,000 pounds of sodium nitrite at its Facility in the 2000, 2001 and 2002 calendar years.
- m. Respondent processed more than 25,000 pounds of copper compounds at its Facility in the 2000, 2001 and 2002 calendar years.
- n. Respondent failed to submit the required Form R or Form A for the toxic chemical sodium nitrite manufactured at its Facility to the Administrator of EPA and the State of West Virginia by July 1, 2001, July 1, 2002, and July 1, 2003, for the 2000, 2001 and 2002 calendar years, respectively.
- o. Respondent failed to submit the required Form R or Form A for the toxic chemicals copper compounds processed at its Facility to the Administrator of

EPA and the State of West Virginia by July 1, 2001, July 1, 2002, and July 1, 2003, for the 2000, 2001 and 2002 calendar years, respectively.

- p. Respondent's failure to submit the required Form Rs or Form As for sodium nitrite and copper compounds to the Administrator of EPA and the State of West Virginia by July 1 of 2001, 2002 and 2003, as described in Paragraphs 16.n and 16.o., above, constitutes six separate violations of Section 313 of EPCRA, 42 U.S.C. § 11023.
- q. By letter dated June 23, 2004, Respondent self-disclosed, *inter alia*, the violations described in Paragraphs 16.n., 16.o. and 16.p., above.
- r. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) provides that any person who violates Section 313 of EPCRA, 42 U.S.C. § 11023, shall be liable to the United States for a civil penalty of up to \$25,000 per violation.
- s. Pursuant to the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19, as revised (64 Fed. Reg. 7121 (February 13, 2004)), violations of Section 313 of EPCRA, 42 U.S.C. § 11023, occurring after January 30, 1997, and before March 16, 2004, are subject to an increased statutory maximum penalty of \$27,500 per violation, and violations occurring after March 15, 2004, are subject to an increased statutory maximum penalty of \$32,500 per violation.

Civil Penalty

- 17. Respondent agrees to pay a civil penalty of Forty Eight Thousand Four Hundred Fifty Three Dollars (\$48,453.00) in full satisfaction of all claims for civil penalties for the violations alleged in Paragraph 16 of the CAFO. Such civil penalty shall become due and payable immediately upon Respondent's receipt of a true and correct copy of the CAFO. In order to avoid the assessment of interest, administrative costs and late payment penalties in connection with such civil penalty, as described in Paragraph 20, below, Respondent must pay such civil penalty no later than thirty (30) calendar days after the date on which this CAFO is mailed or hand-delivered to Respondent.
- 18. The aforesaid settlement amount is consistent with Section 325 of EPCRA, 42 U.S.C. § 11045, and the Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act ("ERP"), dated August 10, 1992.
- 19. Respondent shall remit the full penalty specified in Paragraph 17 above, by electronic funds transfer ("EFT"), as described below, or by submitting a certified or cashier's check payable to the Order of "Treasurer, United States of America," to:

U.S. EPA Region III
Regional Hearing Clerk

P.O. Box 360515
Pittsburgh, PA 15251-6515

Overnight deliveries shall be sent to:

Mellon Client Service Center
500 Ross Street, Room 670
Pittsburgh, PA 15262-0001
ATTENTION: EPA Region III, P.O. Box 360515

For EFT:

Mellon Bank
Pittsburgh, PA
ABA No. 043000261
credit EPA account number 9108552, lockbox 360515

Such payment shall reference Respondent's name and address as well as the EPA Docket Number of this CAFO (Docket No. EPCRA-03-2006-0062). Notice of payment, including a copy of the check or EFT documentation, shall be sent simultaneously to:

Regional Hearing Clerk (3RC00)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and

Janet E. Sharke
Sr. Assistant Regional Counsel (3RC30)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

20. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue.

Interest on the portion of the civil penalty not paid within 30 calendar days will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

A late payment penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

21. Failure by Respondent to comply with the requirements of this CAFO may subject Respondent to additional enforcement action, including, but not limited to, the issuance of an Administrative Complaint and imposition of penalties, as provided by Section 325 of EPCRA, 42 U.S.C. § 11045, or the accompanying Final Order.

For Respondent

1/31/2006
Date

William H. Hopkins
William H. Hopkins
Plant Manager, Washington Works
E.I. du Pont de Nemours and Company

For Complainant

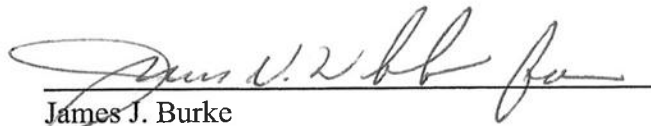
3/1/06
Date

Janet E. Sharke
Janet E. Sharke
Sr. Assistant Regional Counsel

After reviewing the Findings of Fact and Conclusions of Law and other pertinent matters, the Waste and Chemicals Management Division of the U.S. Environmental Protection Agency, Region III, hereby recommends that the Regional Administrator or his designee, the Regional Judicial Officer, issue the attached Final Order.

MARCH 16, 2006

Date

A handwritten signature in dark ink, appearing to read "James J. Burke", is written over a horizontal line.

James J. Burke

Director

Waste and Chemicals Management Division

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, PA 19103-2029

IN THE MATTER OF:

E.I. du Pont de Nemours and Company

Respondent

Washington Works
Route 892 South
Parkersburg, WV 26181

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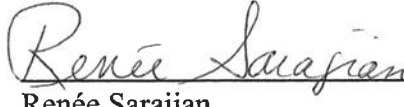
FINAL ORDER

Complainant, the Director of the Waste and Chemicals Management Division, U.S. Environmental Protection Agency, Region III, and Respondent, E.I. du Pont de Nemours and Company, have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth fully herein.

NOW, THEREFORE, PURSUANT TO Section 22.18(b)(3) of the *Consolidated Rules of Practice* and Section 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045(c), which authorizes the assessment of a civil penalty for violations of EPCRA, and having determined on the basis of the representation of the parties hereto that the civil penalty agreed to in the Consent Agreement is consistent with EPCRA § 325, 42 U.S.C. § 11045, IT IS HEREBY ORDERED that Respondent comply with the terms and conditions of the attached Consent Agreement and pay a civil penalty of Forty Eight Thousand Four Hundred Fifty Three Dollars (\$48,453.00), as specified in the attached Consent Agreement.

The effective date of this Final Order and the accompanying Consent Agreement is the date on which the Final Order, signed by the Regional Administrator of U.S. EPA, Region III, or the Regional Judicial Officer, is filed with the Regional Hearing Clerk of U.S. EPA, Region III.

3/21/06
Date


Renée Sarajian
Regional Judicial Officer
U.S. Environmental Protection Agency, Region III